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APPLICATION N	o. , I. , ,	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/691,896		10/19/2000	Mark H. Theno	1335.001US1	7633	
21186	7590	08/09/2004		EXAMINER		
SCHWE	GMAN,	LUNDBERG, WOES	YU, GINA C			
P.O. BOX MINNEA		MN 55402	ART UNIT	PAPER NUMBER		
Manufacture Constitution of the Constitution o				1617		
				DATE MAILED: 08/09/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application	ı No.	Applicant(s)					
		09/691,896	,	THENO, MARK H.					
	Office Action Summary	Examiner		Art Unit					
		Gina C. Yu		1617					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply									
A SHI THE I - Exter after - If the - If NO - Failu Any	ORTENED STATUTORY PERIOD FOR REMAILING DATE OF THIS COMMUNICATIOnsions of time may be available under the provisions of 37 CFF SIX (6) MONTHS from the mailing date of this communication period for reply specified above is less than thirty (30) days, a period for reply is specified above, the maximum statutory per the to reply within the set or extended period for reply will, by state to reply within the set or extended period for reply will, by state pely received by the Office later than three months after the mad patent term adjustment. See 37 CFR 1.704(b).	DN. R 1.136(a). In no even a reply within the statute briod will apply and will tatute, cause the applic	t, however, may a reply be time ory minimum of thirty (30) days expire SIX (6) MONTHS from a ation to become ABANDONEI	ely filed s will be considered timel the mailing date of this c O (35 U.S.C. § 133).					
Status									
2a)⊠	Responsive to communication(s) filed on One of this action is FINAL . 2b) 1 This action is FINAL . 2b 1 This action is application is in condition for allow closed in accordance with the practice under	This action is no wance except for	or formal matters, pro		e merits is				
Dispositi	on of Claims								
5)□ 6)⊠ 7)□	 4) Claim(s) 1,3-8,10-14,17-31 and 38-41 is/are pending in the application. 4a) Of the above claim(s) 38 and 39 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) 1, 3-8, 10-14, 17-31, 40, 41 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. 								
Applicati	on Papers								
10)	The specification is objected to by the Examement The drawing(s) filed on is/are: a) and a specificant may not request that any objection to Replacement drawing sheet(s) including the coron and the coron of the oath or declaration is objected to by the	accepted or b) the drawing(s) be rrection is required	held in abeyance. Seed if the drawing(s) is obj	37 CFR 1.85(a). ected to. See 37 Cl					
Priority u	inder 35 U.S.C. § 119								
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 									
2) Notice 3) Inform	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449 or PTO/SB/ 'No(s)/Mail Date	(08)	I) Interview Summary (Paper No(s)/Mail Da) Notice of Informal Pa) Other:	te	D-152)				

DETAILED ACTION

Receipt is acknowledged of Amendment filed on March 8, 2004. Claims 1, 3-8, 10-14, 17-31, 38-41 are pending. Claims 38-39 are withdrawn from consideration. Claim rejections made under 35 U.S.C. § 112, second paragraph as indicated in the previous Office action dated July 7, 2003 are withdrawn in part and maintained in part. Claim rejection made under 35 U.S.C. § 103 (a) over Cartmell et al. (US 5501661) in view of Fischel-Ghodsian (US 5455043) is withdrawn and modified to meet the new claim limitation. Claim rejection made under 35 U.S.C. § 103 (a) over Cartmell et al. and Fischel-Ghodsian and further in view of Wick et al. (US 6010715) is maintained for the reasons of record.

Election/Restrictions

Claims 38 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. While applicants state in reply that the election is made with reservation to traverse, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 41 is vague and indefinite because the claim recites that the "open cell foam" may be a same or different material from the polyolefin which is already used in the foam pad in claim 40. Claim 40 recites that the foam pad comprises a foamed polyolefin; claim 24 recites that the foam can be either synthetic or natural open cell foam; and claim 41 further defines that the open cell foam can be polyolefin, acrylic adhesive, or hydrogels. The confusion arises as to whether the "open cell foam" is different from the said foam in claim 40.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartmell et al. (US 5501661) ("Cartmell") in view of Fischel-Ghodsian (US 5455043).

Cartmell teaches a wound dressing product containing a porous layer. The wound dressing product comprises an optional release liner, an optional removable tab, and a wound dressing. The wound dressing comprises a thin-film layer, an adhesive layer, a porous backing layer, an optional support layer and a hydrogel material. The thin-film layer has a first side and an opposing second side and forms the outer surface of the dressing product. The adhesive layer is positioned on the second side of the thin-

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film layer. The backing layer is constructed of a porous material comprising a polyolefin foam. The porous backing layer has a first side and an opposing second side, and is adhered to the second side of the thin-film layer by the adhesive layer. The optional support layer is made from a material such as woven and nonwoven fabrics. The hydrogel material may be secured to the second side of the support layer. The permeable fabric of the support layer allows the hydrogel material to pass through to the first side of the support layer. The optional release liner overlies the hydrogel material and is secured to the perimeter portion of the second side of thin-film layer by means of the adhesive layer. The optional removable tab is interposed between the thin-film layer and the release liner. The porous layer is taught as having open spaces, thereby giving the layer its porosity. The Cartmell reference clearly teaches that the invention is designed to permeate vapor "which permits the transpiration of moisture through the wound dressing". Thus, as indicated in the previous Office action, the reference clearly teaches that a skilled artisan would have expected that the invention is used to transport vapors.

While the reference does not explicitly states that vapor emitting materials are stored within the foams, examiner respectfully points out that it is implicit in the teachings of Cartnell et al., as the foam layer is the layer though which oxygen and other vapor-permeable substances are transferred from the wound to the environment. The reference teaches that the structure of the patch as claimed is well known in the art, except that the reference is silent as to the cellular structure of the foam. The reference fails to teach that a vapor emitting material is stored in the patch "prior to use".

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Fischel-Ghodsan teaches that patches comprising polyolefin foams, such as polyolefin foams, such as polypropylene foams and polyethylene foams. The reference teaches that varying the porosity of the cellular structure of the foam is within the skill of the art. See col. 5, lines 14-25. The reference teaches that vapor emitting compounds such as therapeutic agents are incorporated in the reservoir layer of the patch. See col. 6, line 56 – col. 7, line 7. See instant claim 10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modified the polyolefin foams of Cartmell et al. as having a cellular structure as taught by Fischel-Ghodsan because the latter teaches polyolefin foams as having cellular structures as part of their form because of the expectation of achieving a foam form that matches the rate of emission with the porosity of the cell sizes. Incorporation of vapor emitting compounds in the foams of Cartmell is viewed an obvious variation of the prior art in view of Fischel-Ghodsan because the skilled artisan would have been motivated to successfully produce a therapeutic medication.

Claims 13, 14, 21, 22, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cartmell in view of Fischel-Ghodsian as applied to claims 1, 3-8, 10-12, 17-20, 23-27, 29, 30, 40, 41 as above, and further in view of Wick et al. (US 6010715) ("Wick").

Cartmell and Fischel-Ghodsian are applied as discussed above. The references lack a teaching of the release layer being made of polyolefin, polyamide, cellulosic, or polyethylene terephthalate.

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Wick teaches a transdermal patches. The backing layer is taught as being made of cellulose acetate, ethyl cellulose, polyethylene terephthalate and others. These compounds are taught as being made of a material that is substantially impermeable to the layer or layers with which it can be in contact. The patches are taught as being kept sealed in an air-tight pouch prior to use. See col. 14, lines 34-65.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the release liner of Cartmell et as. As being made of cellulose acetate, ethyl cellulose, or polyethylene terephthalate, as taught by Wick because of the expectation of achieving a product that is impermeable to the hydrogel, thereby keeping the product intact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the patches of the combined references as being kept sealed in an air-tight pouch prior to use, and thereby having to remove the patch from the seal for use, as taught by Wick, because of the expectation of achieving a patch that is sterile.

Response to Arguments

Applicant's arguments filed March 8, 2004 have been fully considered but they are not persuasive.

Applicant's argument that the Cartmell reference teaches away from the presently claimed invention is unpersuasive. Applicant further asserts that oxygen is not vapor but a gas. The argument is not persuasive because the reference clearly

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indicates that the prior art invention is designed to permit the transport of moisture vapor.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina C. Yu Patent Examiner

> SREENI PADMANABHAN SUPERVISORY PATENT EXAMINER